

# Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence

A special thank you to everyone who participated in the drafting of these trial defense guidelines.

The Campaign for the Fair Sentencing of Youth  
fairsentencingofyouth.org  
February 2015

## **INTRODUCTION**

The objective of these guidelines is to set forth a national standard of practice to ensure zealous, constitutionally effective representation for all juveniles facing a possible life sentence (“juvenile life”) consistent with the United States Supreme Court’s holding in *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012) that trial proceedings “take into account how children are different, and how those differences counsel against irrevocably sentencing [children] to a lifetime in prison.”

The representation of children<sup>1</sup> in adult court facing a possible life sentence is a highly specialized area of legal practice, therefore these guidelines address the unique considerations specific to the provision of a zealous trial defense. These guidelines set forth the roles and responsibilities of the defense team for the duration of a trial proceeding and outline child-specific considerations relevant to pre-trial, trial, and sentencing representation. Direct appeal and collateral review are not explicitly addressed in these guidelines.<sup>2</sup>

These guidelines are premised on the following foundational principles:

- children are constitutionally and developmentally different from adults;
- children, by reason of their physical and mental immaturity, need special safeguards and care;<sup>3</sup>
- children must not be defined by a single act;
- juvenile life defense is a highly specialized legal practice, encompassing the representation of children in adult court as well as the investigation and presentation of mitigation;
- juvenile life defense requires a qualified team trained in adolescent development;
- juvenile life defense requires communicating with clients in a trauma-informed, culturally competent, developmentally and age-appropriate manner;
- juvenile life defense is based on the client’s expressed interests, informed by meaningful and competent child client participation;

---

<sup>1</sup> The terms “children,” “child,” “child client,” “youth,” and “juvenile” used in these guidelines include anyone charged in adult court for an offense committed when the individual was a minor, regardless of whether the client reaches the age of majority prior to or during the legal proceeding.

<sup>2</sup> Aspects of these guidelines will be relevant to transfer hearings and for children facing other extreme sentences. For additional related guidance, see NJDC National Juvenile Defense Standards, ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, NJDC Juvenile Defense Attorneys and Family Engagement, and NLADA Standards for the Appointment of Counsel in Death Penalty Cases. Many of the concepts contained in the other guidelines are adopted here.

<sup>3</sup> UN Convention on the Rights of the Child.

- juvenile life defense counsel must ensure that child clients and their families are treated with dignity and respect;
- juvenile life defense counsel must ensure that victims' families are treated with dignity and respect;
- juvenile life defense counsel must litigate for a presumption against life sentences for children; and
- juvenile life defense counsel must litigate to ensure a meaningful individualized sentencing determination, in which defense counsel is able to fully and effectively present mitigation to the court.

## **TABLE OF CONTENTS**

PART 1	DEFENSE TEAM COMPOSITION AND ETHICAL DUTIES
1.1	DEFENSE TEAM COMPOSITION
1.2	PROFESSIONAL RESPONSIBILITY
1.3	DUTY OF LOYALTY TO CHILD CLIENT
1.4	FAMILY ENGAGEMENT
1.5	WORKLOAD
PART 2	DEFENSE COUNSEL QUALIFICATIONS AND RESPONSIBILITIES
2.1	QUALIFICATIONS
2.2	RELATIONSHIP WITH CHILD CLIENT
2.3	DEFENSE TEAM MANAGEMENT
2.4	CHILD CLIENT’S COMPETENCE TO STAND TRIAL
2.5	RETAIN EXPERT WITNESSES
2.6	DUTY TO ASSERT LEGAL CLAIMS
2.7	CHILD CLIENT TESTIMONY
2.8	CHILD-APPROPRIATE CONDITIONS
2.9	TRIAL PREPARATION
PART 3	INVESTIGATOR QUALIFICATIONS AND RESPONSIBILITIES
3.1	QUALIFICATIONS
3.2	INVESTIGATION
3.3	GUILT/INNOCENCE CASE STRATEGY DEVELOPMENT
PART 4	MITIGATION SPECIALIST QUALIFICATIONS AND RESPONSIBILITIES
4.1	QUALIFICATIONS
4.2	MITIGATION INVESTIGATION
4.3	MITIGATION STRATEGY DEVELOPMENT
PART 5	SENTENCING
5.1	PRESENTATION OF MITIGATING EVIDENCE
5.2	WITNESS TESTIMONY FOR MITIGATION
5.3	AGGRAVATING EVIDENCE
5.4	PRESENTENCE REPORT
PART 6	PLEA AGREEMENTS
6.1	PLEA NEGOTIATIONS
6.2	GUILTY PLEAS

PART 7	POST-SENTENCING RESPONSIBILITIES
7.1	POST-SENTENCING LEGAL ACTION
7.2	POST-SENTENCING RELATIONSHIP WITH CHILD CLIENT AND FAMILY
7.3	SUCCESSOR COUNSEL
7.4	FACILITY PROGRAMMING
7.5	REENTRY PLANNING
PART 8	DEFENSE TEAM COMPENSATION
8.1	PAY RATE
8.2	LITIGATE FOR FUNDING
PART 9	TRAINING
9.1	JURISDICTION-ALLOCATED FUNDS
9.2	CONTINUING EDUCATION

## **PART 1: DEFENSE TEAM COMPOSITION AND ETHICAL DUTIES**

### **1.1 DEFENSE TEAM COMPOSITION**

The defense team must include a minimum of two qualified attorneys (“defense counsel”), an investigator, a mitigation specialist,<sup>4</sup> and, when appropriate, an interpreter. The defense team must be comprised of individuals who, through their experience, training, and function, will advocate zealously for a sentence other than life. The entire defense team should be involved at all stages of the litigation: pre-trial, trial, and sentencing.

At least one member of the team must have specialized training in identifying symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, post-traumatic stress disorder, and neurological deficits; long-term consequences of deprivation, neglect, and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental, and ethnic influences on behavior; effects of substance abuse; and the presence, severity, and consequences of exposure to trauma.

### **1.2 PROFESSIONAL RESPONSIBILITY**

All members of the defense team are agents of defense counsel. The entire defense team is bound by the rules of professional responsibility that govern the conduct of defense counsel, including attorney-client privilege, diligence, and loyalty to the child client. The privileges and protections applicable to the work of all defense team members derive from their role as agents of defense counsel.

The defense team should be familiar with rules and statutes governing disclosure of information in the event that a member of the defense team or retained expert is called as a fact or mitigation witness.

The defense team, as well as retained experts, also should be familiar with rules and statutes governing the mandatory reporting of child abuse and other matters that may be disclosed by the child client, the child client’s family, or others with whom the defense team or expert(s) may come into contact.

---

<sup>4</sup> The term mitigation specialist includes sentencing advocates, forensic social workers, and other similarly trained professionals.

### 1.3 DUTY OF LOYALTY TO CHILD CLIENT

A duty of loyalty is owed to the child client. The defense team must act on behalf of the child client and not the client's caretaker(s). The defense team may not disclose case information to the child client's caretakers, including, but not limited to, parents, current or former guardians, extended family, social workers, counselors, teachers, or coaches, without the consent of the child client, unless required by rule or statute. If the opinion of the child client and caretaker diverge, the defense team is ethically and professionally obligated to act at the direction of the child client, assuming the child client's competency.

### 1.4 FAMILY ENGAGEMENT

The defense team should be sensitive to the ongoing concerns and involvement of caretakers and loved ones while the child client is incarcerated. Although the duty of loyalty remains to the child client, assuming his or her consent, the defense team should provide members of the family and support network with regular updates and the opportunity to ask questions and receive clarification on the legal process.

Building a relationship with the child client's caretakers and loved ones is essential to the defense team's ability to conduct a comprehensive mitigation investigation.

### 1.5 WORKLOAD

All members of the defense team have an ethical obligation to limit their caseloads in recognition of the tremendous time and diligence required to investigate, prepare, and present a case for both guilt/innocence and mitigation. The time and resources required in a juvenile life case are comparable to those of a capital case. In jurisdictions with capital punishment, the workload restrictions placed on capital defenders also should apply to juvenile life defense counsel.

When a juvenile life case is assigned by a public defender office or other government mechanism, the assigning agency must limit the workload of the defense team to the level needed to permit the extraordinary time and effort necessary to ensure zealous and constitutionally effective representation.



## **PART 2: DEFENSE COUNSEL QUALIFICATIONS AND RESPONSIBILITIES**

### **2.1 QUALIFICATIONS**

Defense counsel must provide competent, diligent, zealous, and constitutionally effective advocacy on behalf of the child client, and understand the relevant state, federal, and international law—procedural and substantive—governing juvenile cases prosecuted in adult court.

At least one attorney must have specialized training<sup>5</sup> and relevant substantive experience representing child clients. In particular, at least one attorney must have experience interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner.

At least one attorney must have specialized training and relevant substantive experience representing individuals charged with homicide offenses in adult court, including, but not limited to, the investigation and presentation of sentencing mitigation. When possible, one attorney should have experience investigating and presenting death penalty mitigation at a capital sentencing hearing.

### **2.2 RELATIONSHIP WITH CHILD CLIENT**

Defense counsel must develop a relationship and maintain consistent communication with the child client, including consistent in-person meetings between court appearances. Defense counsel must provide a trauma-informed and a developmentally and age-appropriate explanation to the child client of all aspects of the case, including, but not limited to: the attorney-client relationship and confidentiality; the fact and mitigation investigations undertaken on behalf of the child client; pre-trial motions; hearings; the trial sequence; direct consequences of an adult criminal conviction; and possible plea offers. Defense counsel should explain in a developmentally and age-appropriate manner the expectation of the child client at each appearance in court. The child client must have consistent, meaningful opportunities to ask defense counsel questions and to discuss the case status and strategy. Defense counsel and the child client must discuss what information the child client is comfortable sharing and with whom.

---

<sup>5</sup> See Part 9 for additional guidance on training and continuing education.

### 2.3 DEFENSE TEAM MANAGEMENT

One attorney will act as lead defense counsel. At arrest or the earliest opportunity, lead defense counsel must assemble a competent defense team. Lead defense counsel is fully responsible for the performance and conduct of the defense team. Defense counsel must lead the defense team in a zealous, exhaustive, independent investigation relating to issues of guilt/innocence and sentencing in order to develop a coordinated case theory, mitigation strategy, and presentation at trial. The child client or the child client's caretaker(s) initial opposition to investigation should not prevent the defense team from fulfilling its ethical duty to independently investigate.

When a case is assigned by a public defender office or other government mechanism, the assigning authority should appoint or provide adequate funding for an investigator and mitigation specialist in addition to defense counsel.

### 2.4 CHILD CLIENT'S COMPETENCE TO STAND TRIAL

As a preliminary matter, defense counsel must determine if the child client's ability to participate in his or her own defense is compromised due to developmental immaturity, mental health disorders, trauma, language impairments, or developmental/intellectual disabilities. With assistance from the defense team and qualified professional(s)/expert(s), defense counsel must assess whether the child client's level of functioning limits his or her ability to communicate effectively with defense counsel, as well as his or her ability to have a factual and rational understanding of the proceedings. Defense counsel should not rely on the prosecution's witnesses for any determination of the child client's competency or diagnosis regarding mental health or cognitive issues.

After assessing the child client, if defense counsel determines that he or she may not be competent to stand trial, defense counsel must take all appropriate action, including, but not limited to, retaining a qualified expert in adolescent development and filing a pre-trial motion requesting a competence determination hearing.

If the child client is competent to stand trial but would benefit from certain accommodations during court proceedings, defense counsel should petition the court for such accommodations, including, but not limited to: scheduling proceedings to allow defense counsel the opportunity to meet with the child client before and after each hearing or witness, and avoiding scheduling conflicts with the administration of psychotropic or other medication.

If a bona fide concern about the child client's competency arises at a subsequent phase in the case, defense counsel has a duty to raise the client's competency at that time.

## 2.5 RETAIN EXPERT WITNESSES

In a timely manner, defense counsel must retain all relevant expert witness(es), including, but not limited to, expert witness(es) with specialized knowledge, skill, experience, training, and/or education in adolescent development. Expert witnesses may serve as consulting or testifying witnesses, and may include, but are not limited to, medical doctors, psychiatrists, psychologists, academics, social workers, correctional experts, and forensic experts. The entire defense team should aid defense counsel in identifying, selecting, and preparing expert and lay witnesses relevant to the guilt/innocence and mitigation strategies, and to rebut any aggravating facts presented by the prosecution.

Defense counsel must research and assess jurisdictional disclosure requirements prior to sharing privileged information with retained experts; carefully study the relevant subject matter to give experts adequate direction and focus; thoroughly discuss with experts all conclusions and the form and manner in which those conclusions are to be memorialized; and when relevant, fully prepare experts to testify.

When necessary, defense counsel must zealously litigate for funds to retain defense expert witnesses by submitting necessary declarations and evidence regarding indigency and the need for the expert(s). In the event expert funds are denied, defense counsel must create a sufficient record to litigate the issue on appeal and collateral review.

## 2.6 DUTY TO ASSERT LEGAL CLAIMS

At every stage of the case, defense counsel must consider all legal claims potentially available, investigate the basis for each potential claim before concluding whether to assert it, and evaluate each potential claim in light of the unique characteristics of juvenile life litigation. For each legal claim asserted, defense counsel should present the claim as forcefully as possible, tailoring the presentation to the facts and circumstances in the child client's case and the applicable law in the relevant jurisdiction. Defense counsel must ensure that a full record is made in connection with all claims asserted.

In particular, defense counsel should litigate for a presumption against life sentences for children,<sup>6</sup> and should identify, investigate, and, where appropriate, assert potential legal claims that may reduce the likelihood of a life sentence. This includes motions that would preclude consideration of life sentences for children

---

<sup>6</sup> “[G]iven all [the Court has] said in *Roper*, *Graham*, and [*Miller*] about children’s diminished culpability and heightened capacity for change, [the Court] think[s] appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Miller*, 132 S.Ct. at 2469.

generally, and as applied to specific statutory schemes, including, but not limited to, felony murder, accomplice liability, mandatory enhancements, mandatory consecutive/aggregate sentences, mandatory transfers, and any sentencing scheme that does not allow for an individualized sentencing determination. Defense counsel also should raise child-specific claims where appropriate, including, but not limited to, child-centric jury instructions (*e.g.*, a “reasonable child” standard) and the susceptibility of children to false confessions.<sup>7</sup>

## 2.7 CHILD CLIENT TESTIMONY

The child client retains the right to decide whether to testify in his or her case, however, the defense counsel must explain in a developmentally and age-appropriate manner the benefits and risks of testifying, including, but not limited to, the risk of self-incrimination and impeachment. If the child client decides to testify, defense counsel must thoroughly prepare the client to testify, including, but not limited to, explaining expectations for the child client and courtroom procedures.

Some jurisdictions afford defendants an opportunity for allocution prior to sentencing. In such instances, defense counsel must explain to the child client in a developmentally and age-appropriate manner the benefits and risks of testifying for purposes of allocution. If the child client will testify, defense counsel must thoroughly prepare the child client. If the child client maintains his or her innocence, defense counsel must prepare the child client accordingly.

## 2.8 CHILD-APPROPRIATE CONDITIONS

Defense counsel should advocate that the child client be placed in a juvenile facility until age 21 or the maximum allowable age. Defense counsel must investigate the extent to which the facility provides the child client legally mandated safety protections, medical and mental health care, rehabilitative treatment, and education services to which the child client is entitled.

## 2.9 TRIAL PREPARATION

As the investigation produces information, defense counsel should formulate a defense theory. Defense counsel should seek a theory that will be effective in connection with both guilt/innocence and sentencing and should seek to minimize any inconsistencies between the guilt/innocence and sentencing theories.

Defense counsel cannot effectively proceed to trial until the defense team has exhausted pretrial litigation, the guilt/innocence investigation, and the mitigation investigation.

---

<sup>7</sup> See *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011).

## **PART 3: INVESTIGATOR QUALIFICATIONS AND RESPONSIBILITIES**

### **3.1 QUALIFICATIONS**

The investigator must be able to identify, locate, and interview persons for the case fact development in a culturally competent manner that produces relevant information to build the guilt/innocence defense theory.

The investigator must have experience obtaining all relevant records pertaining to the child client and case, including, but not limited to, the various methods and mechanisms for requesting records—*e.g.*, subpoenas, FOIA requests, criminal background checks, interviews, and on-site investigation—and obtaining the necessary waivers and releases.

At defense counsel's direction, the investigator may assist with the mitigation investigation and/or dispositional advocacy generally.

### **3.2 INVESTIGATION**

The investigation must begin as soon as defense counsel is appointed or retained. The investigation should be conducted regardless of any admission or statement by the child client concerning the facts of the alleged crime, overwhelming evidence of guilt, or facts presented by the prosecution.

As soon as possible, the investigator and defense counsel must go to the crime scene to photograph, diagram, measure, and canvass. Particular attention must be paid to lighting conditions, obstructions, surveillance cameras, witness vantage points, and the time of day and year.

As soon as possible, the investigator must compile an investigation file, which includes a copy of all discovery materials and charging documents. After reviewing the initial discovery and at the direction of or in collaboration with defense counsel, the investigator must create an investigation plan and preliminary witness list.

At the direction of defense counsel, the investigator must conduct in-person interviews of all individuals relevant to the case fact development and issues of guilt/innocence, including, but not limited to: eyewitnesses, alibi witnesses, the prosecution's witnesses, and witnesses familiar with the client's life history that may affect the likelihood of culpability. The investigator must assess the credibility of key trial witnesses as well as canvass for additional witnesses.

The investigator also must collect all relevant physical evidence relating to the facts of the case, including physical and documentary evidence. The fact investigation should include, but is not limited to:

- charging documents;
- police reports;
- autopsy reports;
- records on all police officers involved in the case, including police misconduct reports;
- comprehensive criminal background checks on all witnesses, including the child client, complaining witnesses, and co-defendants;
- photographs;
- video and/or audiotape recordings;
- crime scene and crime lab reports;
- surveillance videos;
- cell phone records;
- social media check on all potential prosecution and defense witnesses, including police officers;
- incarceration records;
- jailhouse recordings; and
- other physical evidence.

### 3.3 GUILT/INNOCENCE CASE STRATEGY DEVELOPMENT

The investigator must assist defense counsel in coordinating and integrating the fact investigation into the case strategy, as well as synthesizing investigative information for the defense team.

## **PART 4: MITIGATION SPECIALIST QUALIFICATIONS AND RESPONSIBILITIES**

### **4.1 QUALIFICATIONS**

The mitigation specialist must be able to identify, locate, and interview persons relevant to mitigation in a culturally competent manner that produces confidential and relevant information. The mitigation specialist also must be competent to obtain all relevant records pertaining to the child client and case and understand the various methods and mechanisms for requesting records and obtaining necessary waivers and releases.

The mitigation specialist should have specialized knowledge of adolescent development, including, but not limited to, developmental science and other research that informs specific legal questions regarding capacities, responsiveness to treatment, and culpability. The mitigation specialist also should have experience interviewing and communicating with children in a trauma-informed and developmentally and age-appropriate manner.

The mitigation specialist should have specialized training and relevant substantive experience identifying symptoms of physical, mental, and behavioral impairment.

### **4.2 MITIGATION INVESTIGATION**

The mitigation specialist must investigate and develop a social, psychological, and genealogical history of the child client for purposes of presenting mitigating evidence at sentencing. The mitigation specialist also should work with the child client and his or her caretaker(s) to develop a reentry plan to present at sentencing.

Mitigation evidence includes, but is not limited to: the ability to make a positive adjustment to incarceration; the realities of incarceration; capacity for redemption; remorse; vulnerabilities related to mental or physical health; explanations of patterns of behavior; negation of aggravating evidence regardless of its designation as an aggravating factor; positive acts or qualities; responsible conduct in other areas of life (*e.g.*, employment, education, as a family member, etc.); any evidence bearing on the degree of moral culpability; mercy; and any other reason for a sentence other than life.

As soon as possible and at the direction of defense counsel, the mitigation specialist must conduct in-person interviews of all relevant persons, including the child client and other relatives and community members who may be able to provide pertinent information about the child's life, including, but not limited to, parents, siblings, grandparents, social workers, teachers, coaches, doctors, therapists, and other medical providers relevant to the child client's life, and multi-generational family history that enable defense counsel to develop and implement an effective mitigation strategy for sentencing. In many instances,

multiple one-on-one interviews will be necessary to build the rapport needed to obtain sensitive information.

As soon as possible and at the direction of defense counsel, the mitigation specialist must obtain all relevant records and documents relevant to the child client's life and multi-generational family history that enable defense counsel to develop and implement an effective mitigation strategy for sentencing. In many instances, in-person inquiries of record custodians will be necessary to collect all relevant documents and records.

The investigation into the child client's life and history should include, but is not limited to:

- age;
- immaturity;
- impetuosity;
- ability to appreciate risks and consequences;
- intellectual capacity;
- intellectual development;
- language impairments;
- existence of and susceptibility to peer and/or familial pressure;
- circumstances of the offense;
- level of participation in the offense;
- ability to meaningfully participate in his/her defense;
- capacity for rehabilitation and remorse;
- education records;
- special education evaluations and services;
- juvenile and/or criminal records, including probation and parole;
- current and prior incarceration/detention records, including availability and completion of correctional programming and relationships with correctional staff and other detainees/inmates;
- trauma history, including traumatic brain damage;
- possible organic brain damage;
- faith and community involvement;



- history of maltreatment or neglect, and/or involvement in the child welfare system;
- multi-generational family history;
- employment and training history;
- pediatric/medical history, including history of genetic disorders and vulnerabilities;
- mental health history;
- physical health history;
- exposure to harmful substances in utero and in the environment;
- history of physical or sexual abuse;
- history of substance abuse;
- gang involvement;
- religious, gender, sexual orientation, ethnic, racial, cultural, and community influences; and
- socio-economic, historical, and political factors.

The mitigation specialist also must collect existing relevant demonstrative evidence that humanizes and positively portrays the child client, including, but not limited to, photographs, videotapes, letters of reference, schoolwork, and awards.

Defense counsel and the mitigation specialist must inform all parties—including the child client, the child client’s caretaker(s), the prosecution, and the court—that the mitigation investigation is an extremely time-consuming, labor-intensive, and lengthy process.

#### 4.3 MITIGATION STRATEGY DEVELOPMENT

The mitigation specialist must assist defense counsel in developing a comprehensive and cohesive mitigation case. The mitigation specialist must be able to synthesize investigative information for the defense team, including, but not limited to, the creation of genealogies, chronologies, social histories, and studies of the cultural, socioeconomic, environmental, political, historical, and racial influences on the child client. The mitigation specialist also should aid defense counsel in the selection and preparation of witnesses who will testify for purposes of presenting mitigating evidence. As necessary to the mitigation investigation and strategy development, the mitigation specialist should identify and recommend other relevant specialists and experts and provide social history information to experts to enable competent and reliable evaluations.

## **PART 5: SENTENCING**

### **5.1 PRESENTATION OF MITIGATING EVIDENCE**

Defense counsel should consider litigating for a bifurcated sentencing hearing, including a jury determination at sentencing. Defense counsel's mitigation presentation at sentencing should include, but is not limited to: the circumstances of the offense, including the extent of the child client's participation and the impact of peer and familial pressure; incompetencies associated with youth, including the child client's inability to deal with police officers, prosecutors, or defense counsel; the child client's reduced culpability due to age and capacity for change; and other relevant life history identified during the mitigation investigation.<sup>8</sup>

Defense counsel must determine the manner in which mitigating evidence will be presented, including, but not limited to, lay witness testimony, expert witness testimony, demonstrative evidence, affidavits, records, and reports.

### **5.2 WITNESS TESTIMONY FOR MITIGATION**

Defense counsel's mitigation presentation should include expert witness testimony on adolescent development, including, but not limited to: youth brain development, youth impetuosity, youth immaturity, youth inability to assess risks and consequences, youth intellectual capacity, youth susceptibility to familial and peer pressure, and youth capacity for reform. Expert witnesses may include, but are not limited to, medical doctors, psychiatrists, psychologists, academics, social workers, forensic experts, correctional or prison experts, gang experts, and others with a particularized knowledge of adolescent development.

Mitigation should include lay witness testimony on the child client's particular development and functioning, family and home environment, community environment, peer and social network, behavior patterns, and any other relevant life history that may explain or diminish the child client's culpability. Lay witnesses may include, but are not limited to, the child client's family, friends, teachers, coaches, classmates, employers, co-workers, social workers, social service providers, treatment providers, neighbors, religious leaders, and community members.

---

<sup>8</sup> See *Miller*, 132 S.Ct. at 2468.

### 5.3 AGGRAVATING EVIDENCE

Defense counsel should legally and factually challenge the use and admissibility of aggravating evidence. As soon as possible, defense counsel should identify the aggravating evidence the government will use in support of a life sentence. Defense counsel carefully should consider whether all or part of the aggravating evidence may be challenged as improper, inaccurate, misleading, or inadmissible. Defense counsel should become familiar with the rules regarding notification of aggravating evidence, object to any non-compliance, and if such rules are inadequate or do not exist, defense counsel should challenge the adequacy of the rules and/or litigate to establish rules regarding notification.

Defense counsel must anticipate and be prepared to rebut the prosecution's aggravating evidence including, but not limited to, the facts of the instant case, criminal history, prior incarceration conduct, and gang involvement. If the prosecution and/or trial judge improperly mischaracterizes mitigating evidence such as the child client's age or family circumstances as aggravating evidence, or considers such evidence as aggravating, not mitigating, then defense counsel must preserve the issue for appeal.

### 5.4 PRESENTENCE REPORT

Some jurisdictions require a presentence investigative report prior to sentencing. In such instances, defense counsel must explain to the child client in a developmentally and age-appropriate manner the potential impact of the presentence report at sentencing and on appeal. Defense counsel should provide the report preparer any information favorable to the child client.

In some jurisdictions, defense counsel must determine whether it is in the child client's best interest to be interviewed by the report preparer, considering, among other factors, the child client's age and maturity. If defense counsel determines that the child client will be interviewed by the report preparer, defense counsel must prepare the child client for the interview in a developmentally and age-appropriate manner and attend the interview with the child client.

If a presentence report is prepared, defense counsel must review the completed report and take all actions to ensure that improper, incorrect, or misleading information is not considered at sentencing.

## **PART 6: PLEA AGREEMENTS**

### **6.1 PLEA NEGOTIATIONS**

At every stage of the case, defense counsel should explore with the child client the possibility and desirability of reaching an agreed-upon outcome. In so doing, defense counsel should explain in a developmentally and age-appropriate manner the rights that would be waived or forfeited, the possible consequences, and the legal, factual, and contextual considerations that bear upon the decision, including, but not limited to, immigration consequences.<sup>9</sup> Specifically, defense counsel must explain to the child client in developmentally and age-appropriate language: the strengths and weaknesses of the prosecution's case; the impact of any applicable sentencing guidelines or mandatory sentencing requirements; the types of pleas that may be agreed to; whether any negotiated agreement can be made binding on the court; the practices, policies, and concerns of persons or entities, including the judge, the prosecutor, and the victim's family, that may affect the content and likely results of plea negotiations; concessions the child client may offer; and benefits the child client may obtain from a negotiated settlement.

If a negotiated settlement would be in the best interest of the child client, initial refusals by the prosecutor to negotiate should not prevent defense counsel from making further efforts to negotiate. Similarly, a child client's initial opposition should not prevent defense counsel from engaging in ongoing settlement negotiations. Ultimately, the decision to plead guilty lies with the child client.

Ongoing negotiations with the prosecution do not diminish the obligations of defense counsel respecting investigation and litigation.

### **6.2 GUILTY PLEAS**

Defense counsel should not advise a child client to accept a guilty plea that could result in a life-without-parole sentence. Defense should not advise a child client to accept a guilty plea allowing for a life sentence or a de facto life sentence without serious strategic consideration.

---

<sup>9</sup> If the child client is a foreign national, defense counsel immediately should contact the relevant consulate for possible funding and assistance. Defense counsel also should file a motion to suppress any statement given to authorities if the child client was not first informed of his or her right to contact the consulate. See UN Vienna Convention on Consular Relations (1963) Art. 36.

## **PART 7: POST-SENTENCING RESPONSIBILITIES**

### **7.1 POST-SENTENCING LEGAL ACTION**

In the event of a conviction, defense counsel should act to maximize the child client's ability to obtain relief, including, but not limited to, filing a motion for a new trial, a motion for resentencing, and/or a notice of appeal.

### **7.2 POST-SENTENCING RELATIONSHIP WITH CHILD CLIENT AND FAMILY**

Defense counsel must explain the terms of the conviction and the right to and grounds for appeal to the child client in a developmentally and age-appropriate manner. Defense counsel must maintain consistent in-person contact with the child client following conviction and prior to the appointment of successor counsel.

If consented to by the child client, defense counsel should explain the terms of the conviction and the right to and grounds for appeal to the child client's family and support network.

### **7.3 SUCCESSOR COUNSEL**

If defense counsel does not continue to represent the child client on direct appeal, defense counsel should take all appropriate action to ensure the timely appointment of successor counsel to represent the child client. Defense counsel should continue to act on the child client's behalf until successor counsel has been appointed or defense counsel's representation has been formally terminated. Defense counsel also should explain to the child client in a developmentally and age-appropriate manner the transition between attorneys.

As soon as possible after successor counsel has been appointed or retained, defense counsel must turn over the complete case file to successor counsel and should cooperate in a professionally appropriate post-conviction strategy.

### **7.4 FACILITY PROGRAMMING**

Defense counsel should identify and advocate for child client-specific programming, education, and physical, mental, and behavioral health needs during incarceration.

## 7.5 REENTRY PLANNING

The defense team should be cognizant of the child client's possibility for release and any reentry planning that should take place in anticipation of release. Reentry planning should include, but is not limited to, identifying programming needs both during and post-incarceration that address issues identified during the investigative and mitigation phase of representation (*e.g.*, the child client's behavioral health, special education, substance abuse disorder, and skills training) to ensure successful reintegration to the community and lower the risk of recidivism.

## **PART 8: DEFENSE TEAM COMPENSATION**

### **8.1 PAY RATE**

The defense team should be compensated at a rate commensurate with the provision of zealous legal representation and that reflects the extraordinary responsibilities inherent in juvenile life representation. Flat fees, caps on compensation, caps on hours worked, and lump-sum contracts are improper for defense team members in juvenile life cases.

Attorneys should be compensated for actual time and service performed. In states that have capital punishment, the pay rate for juvenile life defense attorneys should be commensurate with the pay rate for capital defense attorneys.

Investigators should be compensated in a manner commensurate with the provision of effective investigatory services. Mitigation specialists and retained experts should be compensated in a manner commensurate with the salary scale for comparable services in the private sector.

### **8.2 LITIGATE FOR FUNDING**

Defense counsel must litigate for funding to ensure the provision of zealous legal representation, including funding for an investigator, a mitigation specialist, experts, and other necessary resources. In the event funds are denied, defense counsel must create a sufficient record to litigate the issue on appeal and collateral review.

## **PART 9: TRAINING**

### **9.1 JURISDICTION-ALLOCATED FUNDS**

Jurisdictions that prosecute juvenile life cases should allocate funds for defense team training to ensure zealous representation and appropriate presentation and consideration to the court of the unique factors of adolescence generally, and as applied specifically to individual children.

### **9.2 CONTINUING EDUCATION**

At least once every two years, all defense team members should attend and successfully complete a multi-day comprehensive training program that focuses on the defense of juvenile life cases or topics relevant to juvenile life litigation, including youth behavior and brain development and how it informs specific legal questions regarding capacities, responsiveness to treatment, and culpability.

Defense counsel training should include, but is not limited to: an overview of the relevant state, federal, and international law; pleading and motion practice; pretrial investigation, preparation, and theory development; jury selection; trial preparation and presentation, including the use of experts; ethical considerations particular to juvenile life defense representation; preservation of the record; investigation and presentation of mitigating evidence; rebutting aggravating evidence; defense counsel's relationship with the child client and his/her family and support system; appellate and collateral litigation in state and federal court; and developments in youth behavior and brain development.